

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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|---|---|----------------------|
| In the Matter of |) | |
| |) | |
| Amendment of Section 73.202(b), |) | |
| Table of Allotments, |) | MB Docket No. 03-120 |
| FM Broadcast Stations. |) | RM-10591 |
| (Lake City, Chattanooga, Harrogate, and |) | RM-10839 |
| Halls Crossroads, Tennessee) ¹ |) | |
| |) | |
| |) | |

REPORT AND ORDER

Adopted: November 23 , 2005

Released: November 25, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it: (1) a *Notice of Proposed Rule Making* (“*NPRM*”)² issued at the request of Ronald C. Meredith (“Petitioner”); (2) supporting comments filed by the Petitioner; (3) a counterproposal filed by JBD Incorporated (“JBD”); (3) two reply comments filed by the Petitioner in response to the *NPRM* and the *Public Notice* of JBD’s counterproposal; and (4) other related pleadings.³ For the reasons discussed below, we grant JBD’s counterproposal and deny the Petitioner’s rulemaking petition.

BACKGROUND

2. At the request of the Petitioner, the *NPRM* proposed the allotment of Channel 244A to Lake City, Tennessee (pop. 1,888) as a first local service. To accommodate this new allotment, the *NPRM* proposed to downgrade Station WDOD-FM, Chattanooga, Tennessee, from Channel 243C to Channel 243C0. The Petitioner filed brief supporting comments, reiterating his continuing interest to file an application to construct an FM station on Channel 244A at Lake City.

3. In response to the *NPRM*, JBD, licensee of Station WXJB(FM), Harrogate, Tennessee, timely filed a counterproposal⁴ to substitute Channel 244A for Channel 243A at Harrogate, to reallocate Channel 244A to Halls Crossroads, Tennessee, and to modify the license for Station WXJB(FM) to specify operation on Channel 244A pursuant to the provisions of Section 1.420(i) of the Commission’s

¹ The communities of Harrogate and Halls Crossroads, TN, have been added to the caption.

² *Lake City and Chattanooga, TN*, 18 FCC Rcd 10393 (MB 2003).

³ On August 19, 2004, JBD filed a Motion to Accept Supplement and a Supplement to inform the Bureau of a recent case that it contends is relevant to one of the issues in this proceeding. On September 20, 2004, the Petitioner filed a Motion to Strike the supplement, contending that the Supplement goes beyond apprising the Commission of *Banks, Redmond, Sunriver, Corvallis, and The Dalles, OR*, 19 FCC Rcd 10068 (2004) (“*The Dalles*”), and seeks to respond to the Petitioner’s reply comments. On September 30, 2004, JBD filed an Opposition to Motion to Strike. We deny the Motion to Strike and accept the Supplement because it will facilitate resolution of this case.

⁴ JBD’s counterproposal was placed on *Public Notice* on January 12, 2004, Report No. 2643.

Rules.⁵ JBD contends that its counterproposal meets the requirements for a station to change its community of license because (1) the proposed use of Channel 244A at Halls Crossroads is mutually exclusive with the current use of Channel 243A at Harrogate; (2) Harrogate (pop. 2,865) will not be deprived of its only local service as Stations WLMU(FM), Channel 217A, and WRWB(AM), 740 kHz, will remain licensed to Harrogate; and (3) the provision of a first local service at Halls Crossroads (pop. 11,683)⁶ under Priority 3 of the FM Allotment Priorities will result in a preferential arrangement of allotments over the retention of a third local service at Harrogate under Priority 4.⁷

4. Because Halls Crossroads is partially located within the Knoxville, TN, Urbanized Area, JBD submitted a *Tuck*⁸ showing, seeking to demonstrate the independence of Halls Crossroads from Knoxville, and to justify a first local service at Halls Crossroads. JBD further contends that the proposed reallocation and change of community of license will result in a gain of service to 391,354 persons and a loss of service to 64,786 persons for a net gain of 326,568 persons and the elimination of three existing short-spacings. JBD also alleges that the loss area will continue to remain well served with five or more reception services.

5. JBD's counterproposal is mutually exclusive with the Petitioner's rulemaking petition because Channel 244A at Lake City, TN, is short-spaced to Channel 244A at Halls Crossroads.⁹ Although both proposals would provide first local services, triggering Priority 3, JBD argues that Halls Crossroads should be preferred under established precedent because of its greater population.¹⁰

6. In its first reply comments, the Petitioner submits a technical statement, seeking to demonstrate that JBD's counterproposal is not eligible for consideration because the proposed transmitter site for Channel 244A at Lake City will not provide sufficient line of sight coverage to the community of license. Specifically, the Petitioner submits ten path studies which assume that Station WXJB(FM) will operate with an HAAT of no more than 125 meters to demonstrate lack of city-grade coverage in Halls Crossroads.

7. In its second reply comments, the Petitioner contends that Halls Crossroads is not a community for allotment purposes. The Petitioner states that Halls Crossroads cannot be presumed to be a community for allotment purposes because it is not incorporated or listed in the U.S. Census. Indeed, the Petitioner alleges that JBD overstated the area and population of Halls Crossroads and that its

⁵ This rule permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.

⁶ Because Halls Crossroads is not listed in the U.S. Census, JBD submitted a population figure determined by a demographic specialist at the Knoxville Area Chamber Partnership, using 2000 U.S. Census data. Specifically, the population figure of 11,683 was arrived at by adding Census Tracts 62.02 (pop. 3,701), 62.03 (pop. 4,482), which the Petitioner contends consist exclusively of Halls Crossroads residents, and an estimated 3,500 of the 8,646 residents of Census Tract 62.04, who are also allegedly Halls Crossroads residents.

⁷ The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. [Co-equal weight is given to priorities (2) and (3).] See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

⁸ *Faye and Richard Tuck*, 3 FCC Rcd 5374, 5378 (1988).

⁹ See 47 C.F.R. § 73.207. The required spacing between Channel 244A at Lake City and Channel 244A at Halls Crossroads is 115 kilometers whereas the actual spacing between these proposals is 23 kilometers.

¹⁰ See, e.g., *Blanchard, LA, and Stephens, AR*, 10 FCC Rcd 9828 (1995). An application (BPED-19960710MA) for a noncommercial educational FM radio station was pending for Lake City prior to the filing of the Petitioner's rulemaking petition, which could have provided a first local service to Lake City; however, that application was dismissed by letter July 29, 2005. See DA 05-2025.

population is 1900.¹¹ Further, the Petitioner questions the indicia of community status relied upon by JBD. For example, while JBD listed numerous businesses, the Petitioner contends that JBD has not shown that these businesses are intended to serve the residents of Halls Crossroads as opposed to the North Knoxville area. In addition, the Petitioner questions JBD's *Tuck* showing and argues that a majority of the factors do not demonstrate the independence of Halls Crossroads from the Knoxville Urbanized Area.

8. In its Supplement, JBD seeks to rebut the Petitioner's assertion that a terrain obstruction will prevent Station WXJB(FM) from providing the requisite city-grade coverage to Halls Crossroads. In support of this position, JBD argues that the Petitioner made an incorrect assumption that the proposed HAAT for Station WXJB(FM) will be, at most, 125 meters. However, the Petitioner states that the proposed tower for Station WXJB will be between 175 and 205 meters AGL (or between 232 and 252 meters HAAT) and that at this height, both the standard predicted 70 dBu contour and the Longley-Rice 70 dBu contour of WXJB(FM) will cover 100 percent of Halls Crossroads.

9. Finally, with respect to the Petitioner's arguments about the *Tuck* showing, JBD responds that the Petitioner confuses the city of Knoxville with Knox County. Although JBD acknowledges that Halls Crossroads is located in Knox County and is dependent on Knox County for some of its municipal services, JBD contends that that it is common for an independent community to rely on county services. JBD emphasizes that Halls Crossroads does not rely on Knoxville for these services.

DISCUSSION

10. As a threshold matter, we must address the Petitioner's objections to JBD's counterproposal. First, with respect to the alleged terrain obstruction, the Commission's rules permit construction of, and JBD is willing to construct, a tower high enough to clear the alleged terrain obstruction.¹² Further, we agree with JBD's technical study that an HAAT of between 232 and 252 meters will provide a clear line of sight to the community of Halls Crossroads and that the standard predicted 70 dBu contour will cover 100 percent of Halls Crossroads.¹³ Accordingly, JBD's counterproposal complies with the Commission's technical requirements.

11. Second, contrary to the Petitioner's assertions, we find that Halls Crossroads is a community for allotment purposes. Although Halls Crossroads is not incorporated or listed in the U.S. Census, JBD has demonstrated sufficient indicia of community status consistent with leading Commission level decisions on this subject.¹⁴ Specifically, the Petitioner has shown the existence of businesses, health care facilities, churches, a weekly newspaper, and civic organizations in Halls Crossroads. Further, while the Petitioner alleges that some of these businesses are intended to serve more than the residents of Halls Crossroads, JBD has identified numerous businesses that have "Halls

¹¹ Based upon information obtained from a staff member of the Knoxville Metropolitan Planning Commission, the Petitioner contends that the area of Halls Crossroads is the corner in which Census Tracts 62.01, 62.02, 62.03, and 62.04 intersect. The Petitioner's source for its population figure is the Rand McNally Map Company.

¹² 47 C.F.R. § 73.211(b)(2). Although the standard HAAT for Class A FM stations is 100 meters, this section provides that the standard HAAT can be exceeded if its ERP is reduced such that the reference distance does not exceed the class contour distance.

¹³ See *The Dalles*, 19 FCC Rcd at 10074.

¹⁴ See, e.g., *Kenansville, Florida*, 10 FCC Rcd 9831 (1995) (the presence of two indicia, civic organizations and businesses, warranted a finding of community status); *Beacon Broadcasting*, 2 FCC Rcd 3469 (1987); and *Seven Locks Broadcasting, Co.*, 37 FCC 82 (1964).

Crossroads” in their names, establishing a nexus between these businesses and Halls Crossroads.¹⁵

12. Third, we find that JBD’s *Tuck* showing demonstrates that Halls Crossroads is sufficiently independent of the Knoxville, Tennessee, Urbanized Area to warrant a first local service because a majority of the eight *Tuck* factors are present.¹⁶ We will briefly review each of these factors.

13. The first factor, the extent to which the community residents work in the larger metropolitan area, rather than the specified community, has not been sufficiently documented to support a finding of independence. Although JBD generally alleges, based upon the opinion of a staff member of the *Halls Shopper News*, that a large number of Halls Crossroads residents both live and work in Halls Crossroads, the Petitioner provides demographic information from the U.S. Census, showing that the mean travel time to work for the 1,910 members of the workforce in Census Tract 62.02 and the 2,169 members of the workforce in Census Tract 62.03 was 26 minutes and 23 minutes, respectively. Taking into account traffic, speed limits, and travel distances, the Petitioner argues that these average commuting times demonstrate that a majority of the Halls Crossroads residents work in Knoxville or other parts of the Knoxville Urbanized Area. However, we have found that a small percentage of the workforce, such as 16 percent¹⁷ or 14.6 percent,¹⁸ employed in the community is significant and can justify a favorable finding under *Tuck* factor 1. Nevertheless, JBD has not documented that this level of employment of local residents in Halls Crossroads has been met.

14. The second factor, whether the smaller community has its own newspaper or other media that covers the community’s needs and interests, supports a finding of independence and is evidenced by the *Halls Shopper News*, a weekly newspaper. Although the Petitioner alleges that this publication is not exclusively for the Halls Crossroads area but rather the region of North Knoxville/North Knox County, the presence of a local newspaper covering a community’s local needs and interests is sufficient for a favorable finding on this issue.¹⁹ In this regard, JBD has shown that the *Halls Shopper News* contains local community and business news, a classified section, and advertisements. Further, JBD submits e-mails from many readers, commenting on coverage of local issues covered by the newspaper.

15. The evidence submitted on the third factor, whether community leaders and residents perceive the specified community as being part of, or separate from, the larger metropolitan area, favors a finding of independence. JBD has submitted the view of the Branch Manager of the Halls Branch Library and e-mails from readers of the *Halls Shopper News*, showing that they perceive Halls Crossroads as having an identity separate from the Urbanized Area.²⁰ The Petitioner seeks to rebut this evidence by stating that the Halls Crossroads area is included in the 4th District of the Knoxville City Council and District 7 of the Knox County Commission, that one of the County Commissioners, who lives in the Halls Crossroads area, serves on the boards of various Knoxville organization, and that other community leaders, by their affiliations, residences, and places of business, demonstrate that there is no separation from Knoxville. Further, the Petitioner submits several letters from Lake City, Tennessee, residents and

¹⁵ See JBD’s Counterproposal at 7-8.

¹⁶ See, e.g., *Wallace, ID, and Lolo, MT*, 14 FCC Rcd 21110 (MMB 1999) (the community of Lolo found to be interdependent on Missoula, MT, Urbanized Area because a majority of the *Tuck* factors have not been met); *Chillicothe, Dublin, Hillsboro, and Marion, OH*, 20 FCC Rcd 6305 (MB 2005) (all of the *Tuck* factors need not favor a reallocation; a majority of the factors must be present).

¹⁷ See *Anniston and Ashland, AL, and College Park, GA*, 16 FCC Rcd 3411, 3413 (MMB 2001).

¹⁸ See *Talladega and Munford, AL*, 20 FCC Rcd 13010 (MB 2005).

¹⁹ See, e.g., *Anniston and Ashland, AL, and College Park, GA*, 16 FCC Rcd at 3413.

²⁰ See, e.g., *Pleasanton, Bandera, Hondo, and Schertz, TX*, 15 FCC Rcd 3068 (MMB 2000) (letter from community leader demonstrated independence of community).

leaders, contending that the Halls Crossroads area is part of Knoxville and that Lake City has a greater need for a radio station than Halls Crossroads. However, the location of parts of Halls Crossroads within Knox County or Knoxville or the participation of a County Commissioner on the Boards of various Knoxville organizations does not sufficiently rebut the views of local residents who perceive their community as having an identity separate from the Urbanized Area. Likewise, the Petitioner's letters reflect the views of several residents of the competing community of Lake City, Tennessee, on this matter as opposed to the opinions of the actual residents of Halls Crossroads.

16. The fourth factor, whether the specified community has its own local government and elected officials, is not present. JBD acknowledges that Halls Crossroads is unincorporated and does not have a local government or elected officials, yet JBD seeks to rely upon the presence of a County Clerk Office branch and recycling center in Halls Crossroads in support of this factor. However, the Petitioner points out that the branch office and recycling center are operated by Knox County, not the community of Halls Crossroads.

17. The fifth factor, whether the smaller community has its own local phone book or zip code, is met. Halls Crossroads is listed as a separate section of a local telephone book even though the community does not have its own zip code.

18. The sixth factor, whether the community has its own commercial establishments, health facilities, and transportation systems, supports a finding of independence. JBD has established that Halls Crossroads is home to a variety of businesses, commercial establishments, and health care providers.²¹ Although the Petitioner contends that not all of these businesses are located within Halls Crossroads, we find that many of the listed businesses identify with the community by using "Halls" in their names.²²

19. The evidence on the seventh factor, the extent to which the specified community and the central city are part of the same advertising market, favors a finding of independence. Although JBD contends that local businesses can advertise in the *Halls Shopper News*, enabling them to reach the residents of Halls Crossroads without relying primarily on Knoxville media sources, the Petitioner responds that the *Halls Shopper News* does not primarily rely on the residents of the Halls Crossroads area but also serves Union County, Fountain City, Gibbs, Corryton, Powell, Copper Ridge/Brickery, along with the Halls Crossroads area. Further, according to the Circulation/Research Department at the *Knoxville News-Sentinel*, 8,798 subscriptions to the *Knoxville News-Sentinel* exist within the zip code 37938, which was listed by JBD as encompassing the Halls Crossroads area, indicating that Halls Crossroads may not be a separate advertising market. However, we have found that the ability of local businesses to advertise in a local newspaper is sufficient for a favorable finding on this issue.²³ Even though the *Halls Shopper News* serves other nearby communities, it is available as an advertising vehicle for local businesses without having to rely on other Knoxville media sources, which justifies a favorable finding on this factor.

20. The eighth factor, the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools, and libraries, supports a finding of interdependence. Although JBD contends that the Halls Center provides many municipal services to its residents including Marriage and Drivers Licenses, other motor vehicle services,

²¹ See *Farmersville, Texas*, 12 FCC Rcd 4099 (MMB 1997) (community found to be independent because of presence of some local businesses, churches, parks, and a library); *Mechanicsville, Ruckersville, Williamsburg, and Fort Lee, VA*, 11 FCC Rcd 5758 (MMB 1996).

²² See, e.g., *Talladega and Munford, AL*, 20 FCC Rcd at 13012.

²³ See *Anniston and Ashland, AL, and College Park, GA*, 16 FCC Rcd at 3413; and *Ada, Newcastle, and Watonga, OK*, 11 FCC Rcd 16896 (MMB 1996).

notary public, business license tax, and computer lab, the Petitioner demonstrates that all of these services are provided by Knox County, not Halls Crossroads. Indeed, the Petitioner points out that the schools, fire department, and police department are also provided by Knox County.

21. Overall, five of the eight factors²⁴ support a finding of independence, and three of the factors²⁵ support interdependence. Because a majority of the *Tuck* factors favor independence, we conclude that Halls Crossroads is sufficiently independent from the Knoxville Urbanized Area to warrant being credited with a first local service for purposes of implementing the FM Allotment Priorities.²⁶

22. We next must determine whether the proposed reallocation and change of community of license for Station WXJB(FM) from Channel 243A at Harrogate to Channel 244A at Halls Crossroads meets the requirements of Section 1.420(i) of the Commission's rules and our policies on change of community of license and is, therefore, eligible for comparison with the proposed new allotment at Lake City. In this regard, we find that the reallocation would result in a preferential arrangement of allotments. Specifically, the reallocation of Channel 244A to Halls Crossroads (pop. 11,683) could provide that community its first local service, triggering Priority 3. By way of comparison, the retention of Channel 243A at Harrogate (pop. 2,865) would provide the community with its third local service, triggering less significant Priority 4. Although there would be loss of service to 64,786 persons, those people are already well served with five or more reception services.

23. Conflicting proposals are comparatively considered under the Commission's FM allotment priorities. A staff study has revealed that there is no alternative Class A channel available for Lake City or Halls Crossroads. Accordingly, the proposals must be compared. Although each proposal would result in a first local service, triggering Priority 3, a first local service to Halls Crossroads (pop 11,683) is preferred over a first local service to the smaller community of Lake City (pop. 1,888).²⁷ We recognize, however, that the Petitioner disputes the population figure of 11,683 for Halls Crossroads submitted by JBD and asserts that the population is 1900. However, even using the more conservative estimate by the Petitioner, Halls Crossroads would still be favored because its population is greater than the population of Lake City, which is 1,888.²⁸

²⁴ *Tuck* factors 2, 3, 5, 6, and 7.

²⁵ *Tuck* factors 1, 4, and 8.

²⁶ See, e.g., *Parker and Port St. Joe, FL*, 11 FCC Rcd 1095, 1096 (MMB 1996) (majority of the eight factors indicate that Parker is independent of the Panama City, FL, Urbanized Area); *Talladega and Munford, AL*, 20 FCC Rcd at 13012-13 (majority of *Tuck* factors demonstrate that Munford is independent of urbanized area); and *Chillicothe, Dublin, Hillsboro, and Marion, OH*, 20 FCC Rcd at 6305 (majority of *Tuck* factors show that Dublin is independent of Columbus, OH, Urbanized Area).

²⁷ See, e.g., *Ardmore, AL*, 17 FCC Rcd 16331, 16334-35 (MB 2002); *Three Oaks and Bridgman, MI*, 5 FCC Rcd 1004 (MMB 1990); and *Blanchard, LA, and Stephens, AR*, 10 FCC Rcd 9828 (1995).

²⁸ As a collateral matter, the Petitioner submitted a memorandum of events surrounding a meeting with a principal of JBD's engineering consultants, regarding what the Petitioner believes to be JBD's motivation to "move-in" a small rural station into the Knoxville Urbanized Area in order to increase the value of the station. JBD responds that the Petitioner had previously offered to buy Station WXJB(FM) at a price that JBD felt was unacceptable and alleges that, following that attempt, the Petitioner filed its Lake City Petition in this proceeding, which appears to be an attempt to block the proposed relocation of Station WXJB(FM) from Harrogate to Halls Crossroads. These allegations, however, do not warrant further action. The Petitioner's argument regarding the economic motivation of JBD to increase the value of its station and to serve Knoxville is speculative and is more appropriately raised when a license renewal application is filed. See *Magnolia, AR, and Oil City, LA*, 18 FCC Rcd 8542, 8543 (MB 2003). By way of contrast, our concern at the allotment stage is whether the proposal would serve the public interest under the established allotment criteria discussed above. Further, no extrinsic evidence has been submitted,

(continued...)

24. We will, therefore, reallocate Channel 244A to Halls Crossroads, Tennessee.²⁹ We will also downgrade Station WDOD-FM, Chattanooga, Tennessee, from Channel 243C to Channel 243C0 in view of Station WDOD-FM's response to the reclassification *Order to Show Cause*.³⁰

25. Accordingly, pursuant to the authority contained in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b), and 0.283, IT IS ORDERED, That effective January 9, 2006, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED, with respect to the communities listed below, as follows:

| <u>Community</u> | <u>Channel No.</u> |
|-----------------------------|--------------------|
| Chattanooga, Tennessee | 222C, 243C0, 293C |
| Halls Crossroads, Tennessee | 244A |
| Harrogate, Tennessee | -- |

26. IT IS FURTHER ORDERED, That, pursuant to Section 316 of the Communications Act of 1934, as amended, the license for Station WXJB(FM) Channel 243A, Harrogate, Tennessee, IS MODIFIED to specify operation on Channel 244A at Halls Crossroads, Tennessee, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F.R. Section 73.1620; and
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing

27. Pursuant to 47 C.F.R. Sections 1.1104(1)(k) and 3(l), JBD, Incorporated is required to submit a rulemaking fee in addition to the fee required for the application to effectuate the change of community of license for Station WXJB(FM) at the time its Form 301 application is submitted.

28. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

29. IT IS ORDERED, That the rulemaking petition (RM-10591) filed by Ronald C. Meredith IS DENIED.

30. IT IS FURTHER ORDERED, That the counterproposal (RM-10839) filed by JBD Incorporated IS GRANTED.

(...continued from previous page)
 indicating that the Petitioner's rulemaking petition was filed as a "strike petition" or that the Petitioner does not have an intent to provide service to Lake City.

²⁹ The reference coordinates for Channel 244A at Halls Crossroads are 36-09-43 and 83-58-33.

³⁰ The reference coordinates for Channel 243C0 at Chattanooga are 35-09-39 and 85-19-11.

31. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

32. For further information concerning this proceeding, contact Andrew J. Rhodes, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
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Audio Division
Media Bureau